

SOLICITATION FOR COMPETITIVE PROPOSAL

_____, 1999

(Includes a few changes suggested at workshop)

Section 1 DEFINITIONS

- (a) “Bidder” shall mean any person or entity attending a Bidder’s Conference or participating in any part of the SCP process;
- (b) “Bidder’s Conference” shall mean the meeting conducted by the Commission after release of the SCP open to all potential Bidders for the purpose of asking questions about the SCP;
- (c) “Confidential Meeting” shall mean the private meeting between Bidder and the Commission regarding a Discussion Proposal;
- (d) “Commission” shall mean the California Energy Commission and/or its staff;
- (e) “Discussion Memorandum” shall mean the written document prepared by the Commission memorializing the discussion during a Confidential Meeting;
- (f) “Discussion Proposal” shall mean any proposal submitted according to the criteria set forth in section 7;
- (g) “Final Proposal” shall mean a proposal submitted according to the criteria set forth in section 8
- (h) “PIER” shall mean the Public Interest Energy Research, Demonstration and Development Program, established pursuant to AB 1890 (1996) and SB 90 (1997).
- (i) “Proposal” includes a Discussion Proposal or Final Proposal;
- (j) “Solicitation for Competitive Proposal” or “SCP” shall mean the competitive negotiations bid process described in sections 1 through 24.

Section 2 INTENT & OVERVIEW OF SOLICITATION FOR COMPETITIVE PROPOSAL (SCP)

- (a) The Commission may use the SCP process in any of the situations described in Public Resources Code section 25620.5(c);
- (b) The intent of the SCP process is to provide an alternative competitive bidding process for research and development solicitations for PIER projects. The SCP differs from a traditional Request for Proposal, in that the SCP provides a mechanism for the Commission to have ~~open~~ discussions with Bidders on the content of each Discussion Proposal in an effort to create a fully responsive Final Proposal. The Commission has the discretion to decide the appropriate selection criteria for each SCP;
- (c) In the SCP process, the Commission may include in the SCP an option or requirement for Bidders to submit one or more Discussion Proposals before the Final Proposal, as needed for the specific technical requirements of the solicitation. For each Discussion Proposal the following process is employed:
 - (i) The Commission evaluates the Discussion Proposal, without assigning a numerical score;
 - (ii) The Commission prepares a discussion agenda, which details the areas in the
 - (iii) Discussion Proposal that are not responsive to the requirements in the SCP and where it can be improved;
 - (iv) The Bidder and Commission have a Confidential Meeting, giving the parties an opportunity to negotiate the Discussion Proposal(s);
 - (v) The Commission prepares and sends to Bidder a Discussion Memorandum memorializing the discussion during the Confidential Meeting;
- (d) The process outlined in subdivision (c) would be repeated for each Discussion Proposal in the SCP.

Section 3 BIDDER'S CONFERENCE & REQUEST FOR SCP CLARIFICATIONS/CHANGES

- (a) If Bidders have questions regarding the SCP, Bidders have the option to submit a formal written request for clarifications about the SCP. If Bidders believe one or more of the SCP requirements is onerous, unfair or imposes unnecessary financial or other constraints, Bidders also have the option to submit a formal written request to change the SCP. Requests must be received by the Commission five working days before the Bidder's Conference. The identity of the Bidder making any request for clarification/change shall be kept confidential;
- (b) If a Bidder has made a request for clarifications or change to the SCP pursuant to subdivision (a), the Commission shall hold a Bidder's Conference. If no such request has been made, the Commission may hold a Bidder's Conference.
- (c) If the Commission holds a Bidder's Conference, the Commission shall notify all parties who requested a copy of the SCP regarding the date, time and place of the Bidder's Conference. The Commission shall specify in the SCP whether the Bidder's Conference is optional or mandatory for prospective Bidders. If the Bidder's Conference is mandatory, Bidders must attend in order to be able to participate in the SCP process;
- (d) At the Bidder's Conference, Bidders may raise any additional questions not already submitted pursuant to subdivision (a);
- (e) The Commission shall answer the requests at the Bidder's Conference orally and after the Bidder's Conference in writing;
 - (i) If the request was for clarification, the answer shall explain the clarification;
 - (ii) If the request was for change, the answer shall state either why a requested change is not appropriate, or, that the Commission shall issue an addendum based on the information contained in the request for change;
- (f) After the Bidder's Conference, the Commission shall ~~prepare~~ **provide written** answers to all questions and requests for clarification/changes submitted or questions presented at the Bidder's Conference. If the Bidder's Conference was mandatory, the answers shall be sent only to Bidders who attended the Bidder's Conference. If the Bidder's Conference was optional, the answers shall be sent to all parties who requested a copy of the SCP;
- (g) Oral answers given at the Bidder's Conference shall not be binding;

Section 4 POSSIBLE MODIFICATION/ADDENDA TO SCP

- (a) The Commission has the right to modify the SCP at any time before Final Proposals are due, by issuing an addendum to the SCP;
- (b) If changes are necessary to the SCP as a result of a request for clarifications or changes, the Commission shall modify the SCP by issuing an addendum to the SCP.

Section 5 NOTICE OF INTENTION TO BID

- (a) In order to screen Bidders for eligibility, the Commission may include in the SCP a requirement to submit a Notice of Intention to Bid. If the Notice of Intention to Bid is used, Bidders shall submit the Notice of Intention to Bid in order to be able to submit any Proposal responsive to the SCP. Future written communication from the Commission shall be delivered only to those Bidders who submit a Notice of Intention to Bid.
- (b) Bidders may withdraw or modify a Notice of Intention to Bid at any time before the due date for the Notice of Intention to Bid.
- (c) The Notice of Intention to Bid shall include, at a minimum, the following:
 - (i) Identify how the ~~Proposal~~ project will meet the requirements of the SCP;
 - (ii) Identify team that will participate in Confidential Meetings;
 - (iii) Confidentiality statement, the form of which shall be provided in the SCP, listing existing confidential documents or data, and anticipated confidential deliverables or work product.
- (d) The Notice of Intention to Bid may also include, without limitation, the following:
 - (i) Bidder's general qualifications;
 - (ii) Bidder's technical qualifications;
 - (iii) Financial measures such as net present value;
 - (iv) Capabilities of team as related to scope of work detailed in the SCP;
 - (v) Proof of financial ability to perform an awarded contract, including without limitation, financial statements, credit rating, liquidity ratios, equity ratio, equity rating and previous bankruptcy of Bidder, if any. If Bidder wants financial information to be kept confidential, Bidder must make a request for confidentiality pursuant to 20 CCR 2501 *et. seq.* (See section 16 regarding confidentiality requests).
- (e) In the SCP, the Commission shall specify a deadline for the Notice of Intention to Bid.
- (f) The Commission shall evaluate Bidders on specific criteria detailed in the SCP, and the criteria listed in subdivisions (c) and/or (d). The Notice of Intention to Bid may be scored numerically;
- (g) The Commission shall notify Bidders of whether the Bidder shall be permitted to continue in the SCP process and submit Proposals:
 - (i) If the Commission determines that the Bidder is not eligible to receive an award under the SCP, and that such ineligibility cannot be cured within the deadline for Final Proposals, the Commission shall notify Bidder that it is disqualified from further submittals under the SCP. The Commission shall indicate the specific reasons why Bidder is disqualified.
 - (ii) If the Commission determines that the Bidder is eligible to compete for an award under the SCP, the Commission shall notify Bidder that it is eligible to receive an award under the SCP and it may submit the first Discussion Proposal.

Section 6 DISCUSSION PROPOSAL PROCEDURES

- (a) The Commission may include in the SCP an option or a requirement to submit one or more Discussion Proposals.
- (b) The Final Proposal shall always be required in all SCPs.
- (c) Each Discussion Proposal shall employ an identical process outlined in this section.
- (d) If a Notice of Intention to Bid was used, only those Bidders who were not disqualified after the Notice of Intention to Bid are eligible to submit a Discussion Proposal.
- (e) Upon receipt of a Discussion Proposal, the Commission shall evaluate the Proposal for responsiveness to the SCP. Discussion Proposals shall not be given a numerical score.
- (f) The Commission shall schedule a Confidential Meeting with each Bidder.
- (g) The Commission shall prepare a discussion agenda for each Discussion Proposal and shall send it to Bidder before the Confidential Meeting. The discussion agenda shall correspond to the selection criteria in the SCP, and note where the Discussion Proposal is not responsive to the requirements in the SCP and where the Discussion Proposal can be improved.
- (h) The purposes of the Confidential Meeting are to ensure that the Bidder's Final Proposal will be responsive to the SCP and to give the parties an opportunity to negotiate the content of the Discussion Proposal.
- (i) Oral statements by either party during any portion of the Discussion Proposal process shall not obligate either party.
- (j) After the Confidential Meeting, the Commission shall send a response to each Bidder who participated in the Confidential Meeting:
 - (i) The response may take the form of a Discussion Memorandum, which memorializes agreements negotiated by the parties. The content of the Discussion Memorandum is binding on the Bidder. If the Bidder believes there is a discrepancy between the Discussion Memo and the content of the Confidential Meeting, the Bidder may request the Commission to change the Discussion Memorandum, which may be changed in the Commission's sole discretion.
 - (ii) If it appears that the Discussion Proposal cannot be restructured or changed in a reasonable time in order to become responsive to the SCP or fulfill the SCP criteria, and that further discussion would not likely result in an acceptable Final Proposal, the response shall detail why the Commission believes that Bidder is non-responsive to the SCP and is unlikely to receive an award. In such case, the Commission shall not accept any further Discussion Proposals, or negotiations, but Bidder may submit a Final Proposal.
- (k) The SCP shall list deadlines for each Discussion Proposal, the Discussion Agenda, Discussion Memorandum and requests for change of the Discussion Memorandum.

Section 7 DISCUSSION PROPOSALS: CONTENT AND CRITERIA

- (a) The purpose of a Discussion Proposal is to provide Bidders an opportunity for the Commission to identify any faulty or nonresponsive aspect of the Discussion Proposal and an opportunity for the parties to negotiate the contents of the Discussion Proposal.
- (b) Each Discussion Proposal shall include, at a minimum, the following information:
 - (i) Identify how the Discussion Proposal will meet the requirements of the SCP;
 - (ii) Identify team that will participate in Confidential Meetings;
 - (iii) Confidentiality statement, the form of which shall be provided in the SCP, listing existing confidential documents or data, and anticipated confidential deliverables or work product;
 - (iv) Costs and complete budget.
- (c) Each Discussion Proposal may include, without limitation, the following information:
 - (i) Bidder's general qualifications;
 - (ii) Bidder's technical qualifications;
 - (iii) Financial measures such as net present value;
 - (iv) Capabilities of team as related to scope of work detailed in the SCP;
 - (v) Proof of financial ability to perform an awarded contract, including without limitation, financial statements, credit rating, liquidity ratios, equity ratio, equity rating and previous bankruptcy of Bidder, if any. If Bidder wants financial statements to be kept confidential, Bidder must make a request for confidentiality pursuant to 20 CCR 2501 *et. seq.* (See section 16 regarding confidentiality requests).
 - (vi) Proposal goals;
 - (vii) Proposal technical objectives;
 - (viii) Proposal economic objectives;
 - (ix) Matching funds amount and source, and date when matching funds become available;
 - (x) Contingency plan for loss of matching funds;
 - (xi) Evidence of compliance with state contract requirements such as Disabled Veterans Business Enterprise, or evidence of current progress toward meeting compliance with state contract requirements;
 - (xii) Complete work statement;
 - (xiii) Schedule with milestones of project tasks from start to end;
 - (xiv) List of anticipated deliverables, including monthly progress reports and final report;
 - (xv) Identification of preexisting intellectual property held by Bidder;
 - (xvi) Letters of support or reference;
 - (xvii) Projection of when royalty repayment would begin, if any;
 - (xviii) Commercialization plan for market adoption of technology.

Section 8 FINAL PROPOSAL

- (a) All Bidders are required to submit a Final Proposal to be eligible to receive a contract award;
- (b) The SCP shall list the deadline for the Final Proposal;
- (c) The Final Proposal shall contain:
 - (i) Everything included in the most recent Discussion Proposals;
 - (ii) Additional information as specified in the SCP;
 - (iii) Signed acceptance of the terms and conditions of the contract, if awarded.
- (d) After the deadline for Final Proposal, no further Proposals will be accepted.
- (e) After the deadline for Final Proposals, no further discussions with the Commission will be permitted, unless such discussion is initiated by the Commission.

Section 9 EVALUATION AND SELECTION PROCESS

- (a) The following criteria may be used to evaluate the Notice of Intention to Bid, and all Proposals:
 - (i) Proposal advances science or technology by providing benefits to California citizens;
 - (ii) Proposal is not adequately addressed by competitive and regulated markets;
 - (iii) Amount of Proposal costs;
 - (iv) Level of public and private benefits compared to Proposal costs;
 - (v) Overall quality of Proposal;
 - (vi) Overall quality of Bidder's team;
 - (vii) Likelihood of and timeframe for success of Proposal;
 - (viii) Technical, market and financial risks of Proposal;
 - (ix) Whether Bidder incorporated negotiated changes from any and all Discussion Proposals;
 - (x) Specific technical evaluation criteria as detailed in the SCP.
- (b) During the evaluations, the Commission may require Bidders to answer specific questions orally or in writing;
- (c) During the evaluations, the Commission may require a demonstration of the Bidder's response to specific requirements in order to verify the claims made in the Proposal;
- (d) During the evaluations, the Commission may visit a Bidder's business or plant site in order to fully evaluate the Proposal;
- (e) The Discussion Proposals will not receive evaluation scores. Only the Final Proposal will be formally scored;
- (f) Final Proposals shall be evaluated according to the procedures and standards as specified in the SCP by a minimum of three evaluators chosen by the Commission;
- (g) Final selection will be among the Final Proposals that are responsive to the SCP requirements.

Section 10 PROPOSED AWARDS OF CONTRACTS

After the deadline for Final Proposals, the Commission shall assign a rank order to each Final Proposal and shall make recommendations to the Research, Development & Demonstration Committee for proposed contract awards based on the highest scored Final Proposals. There is no guarantee that any of the Bidders will receive contract awards. After the proposed contracts have been signed by the Bidders, the Commission will consider final approval of each contract at a publicly noticed Commission business meeting. More than one contract may be awarded by the Commission at that time.

Section 11 DEBRIEFING

- (a) The Commission may provide debriefing information and/or hold a debriefing conference after contract award at the request of any unsuccessful Bidder for the purpose of receiving specific information concerning the evaluation.
- (b) Debriefing is not the forum to challenge the SCP specifications or requirements, or challenge a contract award. See section 12 for contract award protest procedures.

Section 12 AWARD PROTEST

- (a) Contracts shall be awarded only after a notice of the proposed award has been posted at the Commission for five working days;
- (b) If, prior to contract award(s), any Bidder submits a protest to the Commission and to the Department of General Services, Office of Legal Services, the contract shall not be awarded until either the protest has been withdrawn or the protest has been resolved as described in subdivision (e);
- (c) Within five days after filing the protest, the protesting Bidder shall file with the Department of General Services, Office of Legal Services, a full and complete written statement specifying the grounds for the protest;
- (d) Protests shall be limited to the grounds specified in the Public Contract Code section 10378.
- (e) The Department of General Services, Office of Legal Services, shall make a decision on the protest within 30 days and make a recommended finding to the Commission. The Commission shall either approve or disapprove the recommended finding at the next possible publicly noticed Commission business meeting.

Section 13 MODIFICATION OR WITHDRAWAL OF PROPOSALS SUBMITTED

Bidders may withdraw or modify a Proposal at any time before the deadline specified for that Proposal, by submitting a written request to withdraw or modify to the Commission.

Section 14 RIGHT TO MODIFY SCP, CANCEL SCP OR REJECT PROPOSALS

The Commission reserves the right to modify any SCP as needed or to cancel any SCP. The Commission also reserves the right to reject any or all Proposals.

Section 15 GROUNDS TO REJECT PROPOSALS

- (a) The Commission shall reject a Proposal upon the occurrence of any of the following, without limitation:
 - (i) Any Proposal is received past the scheduled deadline; or
 - (ii) Any Proposal is labeled as confidential in its entirety; or
 - (iii) A Final Proposal is not responsive to Disabled Veteran Business Enterprise program requirements or any other state contracting requirement; or
 - (iv) A Final Proposal does not contain a properly executed Certification Clauses Package; or
 - (v) A Final Proposal is not signed on the application form included in the SCP; or
 - (vi) A Final Proposal does not meet the eligibility, completeness and feasibility criteria specified in the SCP.
- (b) The Commission may reject a Proposal upon the occurrence of any of the following, without limitation:
 - (i) Any Proposal contains false or misleading statements or references that do not support an attribute or condition contended by a competitor; or
 - (ii) Any Proposal does not comply with or contains caveats that conflict with the SCP; or
 - (iii) Any Proposal contains a conflict of interest pursuant to Public Contract Code sections 10410, 10411 and 10365.5; or
 - (iv) Any Proposal contains multiple projects within a single Proposal; or
 - (v) Any Proposal is not prepared in the required format described in the SCP.
- (c) If a Proposal is rejected, the Bidder shall be notified that the Proposal is not responsive to the SCP and Bidder is unlikely to receive an award.

Section 16 CONFIDENTIAL INFORMATION

- (a) The Commission shall not accept or retain any Proposal labeled as confidential in its entirety;
- (b) All Proposals shall be kept confidential until the notice of proposed contract awards is posted;
- (c) Final Proposals become a public record when opened;
- (d) If a Bidder believes certain confidential or proprietary is necessary for the evaluation of a Proposal, the Bidder may submit the information in a separate volume marked confidential with a request to keep such information confidential pursuant to 20 CCR 2501-2505.

Section 17 CORRECTION OF ERRORS IN SCP

If a Bidder discovers any errors, conflicts or omissions in any SCP, the Bidder shall immediately notify the Commission in writing and request modification or clarification of the SCP. If any SCP contains an error known to a Bidder, or an error that reasonably should have been known, the Bidder submits Proposals at its own risk.

Section 18 CONTRACT TERMS AND CONDITIONS

Standard contract terms and conditions shall be included with the SCP. No agreement between the Commission and a successful Bidder is in effect until a contract has been signed by both parties and approved by the Department of General Services, Office of Legal Services.

Section 19 BIDDER'S PROPOSAL PREPARATION COSTS

The cost of developing and submitting a Notice of Intention to Bid or Proposal is the Bidder's responsibility and cannot be charged to the Commission or the state of California.

Section 20 DISPOSITION OF PROPOSALS

The Commission shall exercise control over the circulation of all Proposals submitted pursuant to the SCP. All Proposals and materials submitted with Proposals shall become the property of the state of California. After posting of the notice of proposed contract awards, all Proposals, materials submitted with proposals, evaluation sheets and scoring sheets shall become public records.

Section 21 IMMATERIAL DEVIATIONS IN PROPOSAL

The Commission may waive any immaterial defect or deviation in any Proposal. Such waiver shall in no way modify the Proposal or excuse a successful Bidder from full compliance.

Section 22 AUDITS

Contracts awarded under any SCP will be subject to audit by the Bureau of State Audits and the Commission or its representative at any time during the duration of the contract, but no more frequently than once every twelve months. In addition, financial information submitted prior to contract award is subject to audit.

Section 23 JOINT BIDS

Bidders may submit a joint Proposal. In such case, the contract may be awarded as one indivisible, multi-party contract

Section 24 BIDDER RESPONSIBILITY

Prior to award of the contract, the Commission must be assured that the Bidder selected has all of the resources to successfully perform under the contract. Thus includes without limitation, personnel in the numbers and with the skills required, equipment of appropriate type and in sufficient quantity, and financial resources sufficient to complete performance under the contract and experience in similar endeavors.